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## Immigration Policy Update - “Catch and Release”\*

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Recently, the Obama Administration’s border enforcement practices have drawn greater scrutiny, particularly with respect to the apprehension and deportation of those entering the United States in border regions. For example, Donald Trump claims that President Obama has revived a practice, known as “catch and release,” to release people apprehended at the border rather than detaining them pending their immigration court removal proceedings. Trump has pledged that he will detain all unauthorized immigrants until they are deported. Lost in all the political jockeying is the fact the United States is experiencing the lowest level of illegal border crossings in four decades. Moreover, under the Obama Administration, the Department of Homeland Security (DHS) has dramatically increased border security and the use of detention and rapid removal procedures against those arriving at our borders. Unfortunately, these enforcement methods have been shown to undermine fundamental due process protections and deprive legitimate asylum seekers of protection.

### **“Catch and release” ended 10 years ago.**

“Catch and release” is an unofficial term for the government practice of releasing people apprehended at the border while their cases are waiting to be heard in immigration court. In 2006, DHS Secretary Michael Chertoff ended this practice, and began holding more people in detention while they await their court dates. DHS also began applying more severe consequences to individuals caught in border regions and, in particular, began issuing more removal orders against individuals rather than returning people across the border without the legal consequence of a removal on the person’s record. The Obama Administration further expanded these practices and has not revived “catch and release.” These practices have contributed to a significant increase in the number of people removed from the United States during the past decade: in 2006, DHS removed a total of 280,974 people compared to 414,481 people removed in 2014 (the last year for which data is available).

### **Immigration detention has risen to record levels.**

With the end of “catch and release,” the past decade has seen record-high levels in immigration detention. In 2006, when “catch and release” was formally ended by the Bush Administration, DHS detained on average, 21,450 people on a daily basis. The daily number of detainees has

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grown steadily under the Obama Administration, and in July 2016 the average number of people detained for immigration purposes reached a high of 37,350 – an increase of 74% since the end of “catch and release.” Over the past decade, though fewer and fewer people are attempting to enter the United States illegally, the number of people detained is at an all-time high. In other words, a much higher percentage of individuals apprehended are being detained as compared to years past. In 2014, with the influx of Central American families arriving at U.S. border requesting asylum, DHS built new family facilities that detain thousands of families each year.

**Accelerated deportations have risen at the expense of due process.**

In addition to detaining more people, DHS has increased the use of fast-track removal procedures. In 1996, Congress created “expedited removal” and “reinstatement of removal,” procedures which give border officials broad authority to apprehend, detain and remove unauthorized immigrants without any hearing before an immigration judge. Over the past two decades, through directives like the 2006 end of “catch and release,” DHS has instructed border officers to use these fast-track removal methods in far more cases: in 2006, border officers removed 160,202 people with fast-track methods; by 2013 that figure grew to 260,624—an increase of 62 percent.

To achieve faster removals, DHS now bypasses court hearings in the vast majority of cases: By 2013, more than 83 percent of all removals were done through expedited removal or reinstatement of removal. Only people who express a fear of persecution and pass additional screenings have the opportunity to appear before a judge. Those subject to expedited removal not only have a removal on their record but they are automatically barred from returning to the United States for five years. Few people have legal representation when these fast-track procedures are used.

**The people DHS releases are typically asylum seekers or other vulnerable individuals.**

After initial apprehension, DHS may release asylum seekers, families, children and other vulnerable individuals from detention while they await their hearings before immigration court. These individuals however, continue to be monitored after release. DHS uses electronic monitoring and other alternatives to detention to track these individuals and ensure their continued compliance with court appearances. Many asylum seekers and families, however, are still kept in detention despite having credible claims for humanitarian protection under U.S. law.

**Criminal prosecutions are on the rise, but so are due process violations.**

Over the past two decades, DHS has also dramatically increased federal criminal prosecutions of illegal border crossers. Most of these prosecutions occur under the Operation Streamline

initiative, another byproduct of the end of “catch and release.”<sup>1</sup> Illegally entering or reentering the country are among the most prosecuted federal crimes in the United States. By 2012, prosecutions for immigration crimes had grown so much as to constitute 30 percent of all federal criminal prosecutions nationwide.

Operation Streamline has achieved its goal of increased prosecutions through mass trials where as many as 40 defendants appear in court before a single judge and plead to crimes, often with little or no opportunity to receive legal counsel. In 2015, the DHS Inspector General criticized Operation Streamline for prosecuting asylum seekers--a practice that violates U.S. obligations under international treaties. Many of those prosecuted under Operation Streamline have lived in the United States with their families for more than a decade and do not have any criminal convictions other than for illegal entry.

### **Border apprehensions are at record lows.**

The current numbers of border apprehensions have dropped to a 40-year low: About a decade ago the annual number of border apprehensions reached an apex and regularly exceeded one million. By 2015, border apprehensions had dropped to 406,595. With illegal immigration at such low levels, the federal government should not devote additional taxpayer resources to border security unless there is a demonstrated need. The dedication of enforcement resources to border personnel, surveillance, fencing and other infrastructure is already extremely high, and it remains unclear whether these massive investments have been effective. In 1996 there were about 6,000 agents patrolling the border; by 2015 the number of Border Patrol agents grew to 20,273. In 2000, there was 77 miles of border fencing; by 2015, DHS had completed about 700 miles of fencing. DHS has also invested hundreds of millions of dollars in surveillance aircraft, marine vessels, lighting sensors, video and radar systems, night vision equipment, and other infrastructure on the Southwest border.<sup>2</sup>

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<sup>1</sup> United States, Department of Homeland Security Office of the Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing*, May 15, 2015, accessed May 9, 2016, available at [https://www.oig.dhs.gov/assets/Mgmt/2015/OIG\\_15-95\\_May15.pdf](https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf). A report by the DHS Office of Inspector General revealed that “[a]ccording to Border Patrol, the initial intent of Operation Streamline was to deter illegal entries and end catch and release with an operation that included arrest, prosecution, and removal.”

<sup>2</sup> Jeh Johnson, "Border Security in the 21st Century," October 9, 2014, <http://www.dhs.gov/news/2014/10/09/remarks-secretary-homeland-security-jeh-johnson-border-security-21st-century>.